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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,075	05/17/2001	Werner Kuenzel	H 3244-1 PCT	6630

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EXAMINER

FIDEL, DAVID

ART UNIT PAPER NUMBER

3728

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/856,075

Applicant(s)

KUENZEL ET AL.

Examiner

David T. Fidei

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 6-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Nothing in the specification, as originally filed, describes what material the film packs are made of. Nor is any material prescribed which permits resilient contraction of the film pack normal length.

All that is described in pages 4-6 is that a "foil" bag is constructed to be of a length which have the transverse seams 4 resiliently bent over in the wrapping 2 to thus lie under a certain "spring loading" in the wrapping 2 and can cushion, for example, shocks without damage to the tablets 6, because they can move to a certain extent in the wrapping 2 in the direction of the double arrow 9.

If there is a material associated with this feature that permits resilient contraction of the film pack, it is not disclosed.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 6-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Since there is not material disclosed for the film pack

Art Unit: 3728

3, it manifestly follows the claims are indefinite as one of ordinary skill in the art would not be able to ascertain the scope or content of an undisclosed material.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 6-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,629,606. Although the conflicting claims are not identical, they are not patentably distinct from each other because the prior patented device recited;

1. A pack of hygroscopic laundry/dishwasher detergent tablets, comprising: a closed outer pack; and a plurality of films bags which are arranged in the outer pack, and in each said plurality of film bags at least one tablet is accommodated, each of said plurality of film bags being closed at either end by a transverse seam and, along its length, by a longitudinal seam, respectively, each of said plurality of film bags are arranged sorted in the outer pack with their longitudinal seams aligned parallel to one another, with the sidewalls of the outer pack parallel to the longitudinal seams of each one of said plurality of film bags, said side walls being reinforced.

Since the present claim 6 recites the packs each closed by a transverse seam and a longitudinal seam where the film packs are arranged so that at least one side wall is parallel to the longitudinal seam of the film packs, present claim 6 is sufficiently broad enough to

encompass sidewalls of the outer pack parallel to one another thereby effectively extending the previously patented subject matter. The claim is also non-descript regarding the material from which material is used to make the film packs. Claim 7 fails to distinguish over the prior patented subject matter in that contact of the transverse seam is not specified in the patented claims. As such the prior patented claims would encompass any type of packing arrangement in this regard.

Present claims 8 is not distinct from prior patented claim 2 as least one side wall being parallel to the longitudinal seams of the pack is sufficiently broad enough to encompass the reinforced sidewalls in the prior patented claims. Present claim 9 and 10 are identical to prior patented claims 3 and 4, and therefor not patentably distinct.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cornelissens et al (Patent no. 4,397,391) in view of Swiss document 401 812 and Carson et al (Patent no. 2,669,351). Cornelissens et al discloses a packaging with film packs arranged in an equivalent wrapping 1 with their sealing edges 3 folded, col. 4, lines 44, 45 and figure 1. Cornelissens et al col. 4, lines 64 to col.5, line 6 contemplates other packaging means such as Swiss document 401 812 where transverse seam 7 is provided with a longitudinal seam 3, noted figure 2. Hence, to provide film packs of the type claimed with transverse and longitudinal sealing edges arranged in a wrapping having two side walls being parallel to the transverse seams and at least one side wall being parallel to the longitudinal seam in the manner claimed is contemplated by Cornelissens et al.

Art Unit: 3728

As to the film packs constructed of a material which permits resilient contraction of the normal length, it appears the packs Cornelissens et al manifestly permits this where sealing edge 3 is provided in a box with parallel walls of a length such that the sachets 2 can only be inserted with two parallel sealing edges folded over, see figure 1 and col. 4, lines 44 and 45.

The difference between Cornelissens et al and claim 6 resides in at least one side wall being parallel to the longitudinal seams of the film packs is reinforced. In the embodiments of figures 1-7 Carson et al discloses a packaging where the sidewalls are reinforced around the packs with supports 15, 16, note figure 7. As to claims 6 and 7, it would have been obvious to one of ordinary skill in the art to modify the wrapping of Cornelissens et al by providing at least one side wall being parallel to the longitudinal seams of the film packs is reinforced as taught by Carson et al, in order to provide for further support of the packs.

As to claims 8 and 9, the members of Carson et al are inserts comprising corrugated paper (cardboard is a type of paper, i.e., thick/stiff) and the equivalent wrapper of Cornelissens et al is considered self-supporting as per claim 10 by the disclosure of a box supporting fifteen sachets.

### ***Response to Arguments***

Applicant's arguments filed October 19, 2005 have been fully considered but they are not persuasive. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

What is the material disclosed or contemplated by the present invention that permits resilient retraction of the length? It is not known what this material is or how the prior art fails to show, or render obvious, the subject matter applicant thinks this defines.

All that the present disclosure discusses regarding this point is the that the parallel walls of the case is constructed so that the foil bag is constructed to be of a length which have the transverse seams 4 resiliently bent over in the wrapping 2 to thus lie under a certain "spring loading" in the wrapping 2. This is as much as is shown by Cornelissens et al as described above. If any

Art Unit: 3728

distinctions are derived over this language as presently disclosed, Applicant's response falls well shy of demonstrating how this language avoids the prior art. Merely stating there is no teaching of this arrangement in the prior art only sets forth a conclusion not a specific showing of such. Accordingly, the rejections are maintained.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the Examiner concerning the merits of the claims should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David T. Fidei

Primary Examiner

Art Unit 3728

dtf

August 8, 2005